

[ G. R. No. L-10724. April 21, 1958 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.  
MELQUIADES RABA, ET AL., DEFENDANTS. CLEMENTE TALANTOR, DEFENDANT  
AND APPELLEE.**

**D E C I S I O N**

**BAUTISTA ANGELO, J.:**

Clemente Talantor and Melquiades Raba were charged with murder before the Court of First Instance of Antique and the bail for each was fixed by the court at P30,000 as recommended by the provincial fiscal. On April 26, 1956, after the arraignment of the accused at which both pleaded not guilty to the charge, Talantor filed with the court an urgent motion praying that the amount of the bond fixed for his provisional liberty be reduced from P30,000 to P14,000 in order to enable him to go on bail. While the motion setting the hearing thereof in the morning of the same date contains a notification to the provincial fiscal, however, the latter was actually notified at 9:40 o'clock in the morning of the same day. Despite this lack of due notice, the court promptly granted the motion for the reduction of bail one hour later.

On April 28, 1956, the provincial fiscal presented a motion for reconsideration of the order granting the reduction of the bail to P14,000 on the ground that it is irregular because no proper notice of the hearing of the motion for such reduction was given to him as required by the rule to enable him to prove that there exists strong evidence which would warrant the denial of the motion. The motion was denied, hence this appeal.

There is merit in this appeal. The Rules of Court make it a duty of a movant to serve notice of his motion on all parties concerned at least three days before the hearing thereof (section 4, Rule 26). This requirement is more imperative in a criminal case where a person is accused of a capital offense for in such a case admission to bail is a matter of discretion which can only be exercised after the fiscal has been heard regarding the nature of the evidence he has in his possession. Thus, it is provided that "When admission to bail is a

matter of discretion the court must require that reasonable notice of the hearing of the application for bail be given to the fiscal" (section 8, Rule 110), and such notice is necessary because "the burden of showing that evidence of guilt is strong is on the prosecution" (section 7, Rule 110). Here Talantor is charged with a capital offense and while the fiscal fixed a bail of P30.000 for his provisional liberty, its further reduction could not be granted without hearing him because the evidence in his possession may not warrant it.

It has been held that "The determination of whether or not the evidence of guilt is strong is a matter of judicial discretion. This discretion, by the very nature of things, may rightly be exercised *only after the evidence is submitted to the court at the hearing*. Since the discretion is directed to the weight of evidence and since evidence cannot properly be weighed if not duly exhibited or produced before the court (Ramos vs. Ramos, 45 Phil., 362), it is obvious that a proper exercise of judicial discretion requires that the evidence of guilt be submitted to the court, the petitioner having the right of cross-examination and to introduce his own evidence in rebuttal." (Ocampo vs. Bernabe, 77 Phil., 55, 56; Italics supplied.)

Considering that Talantor did not serve notice of his motion to reduce bail on the provincial fiscal at least three days before the hearing thereof and the court failed to require that a reasonable notice thereof be given to said fiscal, it is evident that the court acted improperly in reducing the bail without giving the fiscal an opportunity to be heard.

We wish however to state that the remedy the fiscal should have availed of is certiorari and not appeal considering that the orders herein involved are interlocutory in nature (Rule 41, Section 2).

The orders of April 26, 1956 reducing the bond of Talantor to P14,000, as well as that approving the bail bond as thus reduced, are hereby set aside.

*Bengzon, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

*Paras, C. J., concurs in the result.*

Date created: October 14, 2014